

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3769 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INDRAVADAN B SHAH

Versus

GENERAL MANAGER

Appearance:

MR PB MAJMUDAR for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/05/99

CAVL JUDGEMENT

This petition has been filed for quashing the order of dismissal dated 13.11.1984 of the General Manager (Personnel) and the order dated 18.6.85 of the General Manager (Administration) dismissing the appeal of the petitioner.

2. The petitioner was appointed as a cashier cum clerk in Dena Bank, Sinor Branch on 1.11.65. Thereafter, he was promoted as officer on 20th September, 1971. Lateron, he was further promoted to the post of Accountant on 1.8.1972. He was charge-sheeted on 20th October, 1982 on the allegation that while he was working as an accountant at Sinor branch, during the period from June, 1981 to August, 1981, he misused his position as an accountant and unauthorisedly and fraudulently transferred large amounts to his account standing jointly in the name of his family members and then misappropriated the same. On 13.6.81, he unauthorisedly purchased his own cheque no. 8009821 for Rs.10,000/- drawn on his account of Dabhoi branch and credited to SB account no.2979 in the joint name of himself and his daughter and wife at the branch by debiting to account ARHB. He therefore, kept the aforesaid cheque pending in the branch instead of sending it to Dabhoi branch for collection. On 19.6.81, he deposited Rs.10,000/- in his SB account no. 2979 and unauthorisedly transferred the said amount in order to reverse the outstanding in ARHB no. 300 at the branch. On 19.6.81, he unauthorisedly debited SB account no. 5400 of Shri M.R.Patel by Rs.6000/- and credited the same towards his own O/D against for account. On 20th July, 1981, he again unauthorisedly purchased his own cheque no. 89822 drawn on account no.2 of Dabhoi branch, debited to ARHB account and credited the proceeds to his SB No. 2979 at the branch. He again kept the aforesaid cheque pending at the Sinor branch instead of sending it for collection to Dabhoi branch. On 27th July, 1981, he reversed the outstanding entry at the ARBA account no.317 by transfer of Rs.10,000/- from his SB account no.2979 at the branch. On the basis of the aforesaid allegations, if proved, will constitute acts of misconduct as under:

- (A) Lack of honesty/integrity in the performance of his duties involving or likely to involve bank in financial loss and/or;
- (B) Committed acts prejudicial to the interest of the bank causing financial loss; and/or
- (3) Act/s unbecoming of a bank officer.

2. The aforesaid acts of misconduct if proved against the petitioner shall reflect contravention of regulation no. 3(i) read with regulation 24 of Dena Bank Officers Employees (Conduct) Regulations, 1976 punishable under the Dena Bank Officers Employees' (Discipline and Appeal) Regulations, 1976. The petitioner was required to submit his explanation within 10 days in writing, failing which it was to be presumed

that he had no explanation to offer and further necessary disciplinary action was to be proceeded with.

3. During the departmental proceedings, the Presenting Officer submitted the documents and examined two witnesses in support of the allegations mentioned in the charge-sheet. The petitioner was also given an opportunity to submit a list of documents. The Presenting Officer was directed to supply the list of documents and the list of witnesses to the petitioner and allow the petitioner inspection of the said documents. The Presenting Officer was directed to submit the list of documents and witnesses on completion of the inspection of the documents by the petitioner and the petitioner was also given an opportunity to submit his list of documents and witnesses if he wanted to produce the same in his defence by an order dated 23rd February, 1983. During the course of examination of the witnesses, the petitioner was further given an opportunity to produce any document on record in defence if he intended to do so and if the defence required any document to be produced or any witness to be examined, he should request the management for this purpose.

4. After giving an opportunity of hearing to the petitioner, the inquiry officer submitted his findings on 20th October, 1984 holding that charge nos. 2 and 4 were proved beyond doubt against the petitioner. Charge no. 3 was not proved. Point no. 5 of the charge-sheet was proved to the effect that lack of honesty and integrity to the performance of his duties involving or likely to involve bank in a financial loss and/or committed acts prejudicial to the interest of bank involving or likely to involve bank in financial loss/risk and/or acts unbecoming of a bank officer.

5. The disciplinary authority by an order dated 13.11.1984 passed the order dismissing the petitioner without notice from the service of the bank with immediate effect holding the charges levied against him by a charge-sheet dated 20th October, 1982 were proved under Regulation 6 of Dana Bank Officer Employees' (Discipline and Appeal) Regulation, 1976 confirming the findings of the inquiry authority. The petitioner filed an appeal before appellate authority against the dismissal order and that appeal was also dismissed on 13.11.1984. Therefore, being aggrieved by the same, the petitioner has filed the present petition.

6. The learned advocate for the petitioner submitted that it is a case of no evidence. At the

relevant time, Mr. S.M.Chokshi was the Branch Manager. He was not examined by the department. The despatch clerk who is supposed to despatch cheques has not been examined. Shri S.K.Chokshi who was not Branch Manager, has not been examined, but he has no concern with the affairs of the allegations made against the petitioner. As such, in absence of examination of the relevant and important witnesses, the inquiry is vitiated. In this connection, the learned counsel for the respondents submitted that the petitioner was given full opportunity to file a list of documents as well as to examine any witness in defence for which the petitioner was given an option to make request to the management, but the petitioner has not examined any witness in this connection. As such, if the petitioner intended to get Shri S.M.Chokshi, Branch Manager examined, who was the Branch Manager of the bank at the relevant time, he could have applied to the Inquiry Officer for examination, but he had not applied eventhough sufficient opportunity was given to him. So far as the despatch clerk and bill clerk is concerned, the learned counsel for the respondents submitted that in the bill register, the petitioner himself made entry and signed the bill register. It was not signed by the bill clerk. As such, the examination of bill clerk was not required. The cheque bill voucher was never presented to the despatch clerk. As such, the examination of despatch clerk was also not required.

7. I have given an anxious thought to the submissions made on behalf of the parties. On the basis of the allegations made in the charge-sheet against the petitioner, the bill clerk and despatch clerk, who had no concern, with the matter as stated above, were not required to be examined in the inquiry. So far as the examination of the Branch Manager Shri Chokshi is concerned, the petitioner was given an opportunity to get examined any person in his defence. For that purpose, he was directed to make a request to the management, but he neither submitted any list of documents nor list of witnesses for the examination. He also did not make any prayer to get Shri Chokshi examined. Another Shri Chokshi was the Branch Manager at the relevant time and was also examined and was cross-examined by the petitioner at length. As such, no prejudice has been caused to the defence by non-examination of Shri S N Chokshi who was the Branch Manager at the relevant time.

8. The learned counsel for the petitioner submitted that the charge-sheet was issued after 14 months which is not sustainable in the eye of law due to

lapse of time. In my opinion, mere delay in filing the charge-sheet is no ground to vitiate the departmental proceedings.

9. It is further argued by the learned counsel for the petitioner that the inquiry was not conducted in accordance with rule 21(1) of Rules. Rule 21 requires that on the conclusion of the inquiry, the inquiry authority shall prepare a report which shall contain the following matters.

- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a gist of the defence of the officer employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article or charge;
- (d) the findings on each article of charge and the reasons therefor.

I have gone through the findings of the inquiry officer who has submitted the inquiry report which includes 12 articles and the inquiry officer as delinquent, each item of the charges levelled against the petitioner and the inquiry officer has exonerated the petitioner from charge no. 3 which was not proved against him. The remaining charges were proved against the petitioner. The Inquiry Officer has given elaborate reasons therefor.

Thereafter, the petitioner filed an appeal before the appellate authority. The appellate authority has elaborately discussed the charges and the material in support thereof. After considering the complete material on record, the appellate authority came to the conclusion that the charges levelled against the petitioner were proved and the disciplinary authority was justified in concurring with the findings of the inquiry officer. The appellate authority has not found any good ground. Hence, the appeal was dismissed.

10. The learned counsel for the petitioner submitted that various other persons were dismissed, but later on in appeal or in other proceedings, major punishments were substituted by those of minor punishments. In the similar manner, the petitioner is also entitled to be treated as such and his major

punishment be substituted by that of minor punishment. The petitioner has filed a list of certain persons wherein major punishments were substituted by those of minor punishments, but there is nothing on record before this Court as to what were the considerations before the authorities concerned and under what circumstances, major punishments were substituted by those of minor punishments. Each case proceeds with its own facts and circumstances. As such, the contention of the learned counsel for the petitioner is not sustainable in this regard.

11. On the quantum of punishment, the learned counsel for the petitioner submitted that the petitioner was not knowing balance in the account of other branch, hence he issued cheques and later on when he came to know that he had no balance in the account of other branch of the bank, he had deposited the amount within seven days. As such, he deserves minor punishment. Even if it is assumed that a mistake has been committed by the petitioner, minor punishment could be substituted in place of major punishment. But the learned advocate for the respondents submitted that it is not an ignorant isolated act of the petitioner, but it is a deliberate act of the petitioner. In the bill register, the petitioner himself has prepared the voucher and in the bill register, he himself has made entry and signed and it is not signed by the bill clerk. The voucher was also deceptive as it does not indicate the name of the branch where the cheque was to be drawn. The voucher, after being prepared by the petitioner himself, it was not checked by any other officer, but it was approved by himself and not by the Branch Manager. Though the Branch Manager and the petitioner were present on the relevant time for the advance to the staff. They are required to be sanctioned by the higher authorities as per rule 16. In the present case, there is no sanction by the higher authority for sanctioning loan in the form of purchase of the cheque. According to rule, in absence of the Branch Manager, the petitioner himself cannot sign the voucher. Powers can be exercised by the officiating officer, as on the relevant date, the petitioner as well as Branch Manager were present in the bank and the petitioner was not authorised to approve his own voucher and this voucher along with cheque was not given to the despatch clerk and it had never been sent to the other Branch of the Bank. As such, the petitioner himself is guilty of exercising powers as Branch Manager by preparing the voucher without indicating the name of the Branch of the Bank, he himself approved, signed it in the bill register. Moreover, transfer slip is also not signed nor

approved by any officer and simply a transfer entry is made. The petitioner has not committed any ignorant act, but all acts of the petitioner are intentional and they amount to misconduct and he does not deserve any sympathy from this Court as he had been charged for several acts in past also and inquiries were also pending against him as mentioned in the reply-affidavit. The petition has no merit and is liable to be dismissed.

Accordingly, this petition fails and is dismissed. Rule is discharged with no order as to costs.

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